

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION

W.L. GORE & ASSOCIATES, INC.,
555 Papermill Road
Newark, DE 19711

Plaintiff

v.

SAINT-GOBAIN PERFORMANCE PLASTICS
CORPORATION,
750 East Swedesford Road
Valley Forge, PA 19482

Defendant.

Civil Action No. 1:08-CV-0054 (BEL)

JURY TRIAL REQUESTED

ANSWER TO COUNTERCLAIMS

Plaintiff and Counterclaim-Defendant, W.L. Gore & Associates, Inc. (“Gore”), by its attorneys, for its answer to the counterclaims of Defendant and Counterclaim-Plaintiff, Saint-Gobain Performance Plastics Corporation (“Saint-Gobain”), alleges as follows:

ANSWER

THE PARTIES

1. Gore admits that Saint-Gobain is a California corporation and otherwise is without knowledge or information sufficient to form a belief as to the remainder of this paragraph.

2. Gore admits that Gore is a Delaware corporation and presently does some business from a facility located at 209 Oak Ridge Road, Oak Ridge, New Jersey, 07438 and otherwise denies the remainder of this paragraph.

3. Gore admits that the Saint-Gobain's Counterclaims purport to arise under the United States patent laws but denies patent validity, enforceability, and infringing any valid and enforceable claim of U.S. Patent Nos. 6,290,265 (the "'265 patent") or 7,093,859 (the "'859 patent").

COUNT ONE
(Infringement of U.S. Patent No. 7,093, 859)

4. See responses 1-3 above.

5. Gore admits that Saint-Gobain purports to own all right, title and interest in the '859 patent and otherwise is without knowledge or information sufficient to form a belief as to the remainder of this paragraph.

6. Gore admits that subsequent to February 28, 2007, Gore has designed, manufactured, and sold molded manifolds and otherwise denies.

7. Gore denies.

8. Gore denies.

9. Gore denies.

10. Gore denies.

COUNT TWO
(Infringement of U.S. Patent No. 6,290, 265)

11. See responses 1-10 above.

12. Gore admits that Saint-Gobain purports to own all right, title and interest in the '265 patent and otherwise is without knowledge or information sufficient to form a belief as to the remainder of this paragraph.

13. Gore admits that subsequent to February 28, 2007, Gore has designed,

manufactured, and sold molded manifolds and otherwise denies.

14. Gore denies.

15. Gore denies.

16. Gore denies.

17. Gore denies.

RELIEF REQUESTED

These paragraphs set forth the statement of relief requested by Saint-Gobain to which no response is required. Gore denies that Saint-Gobain is entitled to any of the requested relief and denies any allegations.

JURY TRIAL DEMANDED

This paragraph set forth Saint-Gobain's request for a jury trial to which no response is required.

ADDITIONAL AND/OR AFFIRMATIVE DEFENSES

Subject to the responses above, Gore alleges and asserts the following defenses in response to the allegations, undertaking the burden of proof only as to those defenses deemed affirmative defenses by law, regardless of how such defenses are denominated herein. In addition to the affirmative defenses described below, subject to their responses above, Gore specifically reserves all rights to allege additional affirmative defenses or other defenses that become known through the course of discovery.

1. Saint-Gobain's Amended Complaint as to Gore should be dismissed or transferred to the United States District Court for the District of Maryland under first-to-file rule or 28 U.S.C. § 1404.

2. One or more of Saint-Gobain's counts fails to state a claim upon which relief can be granted.

3. Gore does not infringe and has not infringed (not directly, contributorily, or by inducement) any valid and enforceable claim of the '265 and '859 patents either literally or under the doctrine of equivalents.

4. The claims of the '265 patent are invalid for failure to satisfy one or more of the requirements of Sections 100 *et seq.*, 101, 102, 103, and 112 of Title 35 of the United States Code.

5. The claims of the '859 patent are invalid for failure to satisfy one or more of the requirements of Sections 100 *et seq.*, 101, 102, 103, and 112 of Title 35 of the United States Code.

6. Saint-Gobain's claims are barred, in whole or in part, by failure of Saint-Gobain and/or its licensees to comply with the marking and/or notice provisions of 35 U.S.C. § 287.

7. By reason of admissions, arguments, and/or amendments made by or on behalf of the applicants during the proceedings in the United States Patent and Trademark Office during prosecution of each of the applications that resulted in the issuance of the '265 and '859 patents, Saint-Gobain is estopped from construing any claim of the '265 and '859 patents to include any Gore product, process, or method under the doctrine of prosecution history estoppel.

8. The claims of the '265 and '859 patents are unenforceable as asserted, in whole or in part, by doctrines of waiver, laches, and/or estoppel.

9. The claims of the '265 and '859 patents are invalid and/or unenforceable due to unclean hands, inequitable conduct and/or fraud as alleged in further detail in Gore's Amended Complaint.

10. Saint-Gobain cannot satisfy the requirements applicable to its request for injunctive relief and has an adequate remedy at law.

11. Saint-Gobain's alleged damages are limited to the extent that the limitations period bars past damages claims.

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March 11, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true copy of ANSWER TO COUNTERCLAIMS were served via electronic mail and via First Class Mail, postage prepaid, on March 11, 2008, on:

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